FILE COPY

No. 610

Office - Supreme Court, U. S.
FILED
OCT 19
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ANGELUS MILLING COMPANY, *Petitioner*

vs.

JOSEPH D. NUNAN,
Commissioner of Internal Revenue

APPENDICES

INDEX TO APPENDICES

	Page
APPENDIX A	
Statutes and regulations involved	1
APPENDIX B	
Reprint of illegible pages 126-129 of Transcript of Record	13
APPENDIX C	
Petition for Writ of Certiorari of Solicitor General, in *United States v. Memphis Cotton Oil Co.*, 288 U. S. 62	17

APPENDIX A

Revenue Act of 1936, c. 690, 49 Stat. 1648:

TITLE VII — REFUNDS OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT

SEC. 901. REPEALS.

Sections 21 (d), 21 (e), and 21 (g) of the Agricultural Adjustment Act, as amended, are hereby repealed. (7 U. S. C. 1940 ed., Sec. 623.)

SEC. 902. CONDITIONS ON ALLOWANCE OF REFUNDS.

No refund shall be made or allowed, in pursuance of court decisions or otherwise, of any amount paid by or collected from any claimant as tax under the Agricultural Adjustment Act, unless the claimant establishes to the satisfaction of the Commissioner in accordance with regulations prescribed by him, with the approval of the Secretary, or to the satisfaction of the trial court, or the Board of Review in cases provided for under section 906, as the case may be—

(a) That he bore the burden of such amount and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under his control, or having control over him, or subject to the same common control, in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing; (2) through reduction of the price paid for any such commodity; or (3) in any manner whatsoever; and that no understanding or agreement, written or oral, exists

whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; or

(b) That he has repaid unconditionally such amount to his vendee (1) who bore the burden thereof, (2) who has not been relieved thereof nor reimbursed therefor, nor shifted such burden, directly or indirectly, and (3) who is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever. (7 U. S. C. 1940 ed., Sec. 644.)

SEC. 903 [as amended by Section 405, Revenue Act of 1939, c. 247, 53 Stat. 862]. FILING OF CLAIMS.

No refund shall be made or allowed of any amount paid by or collected from any person as tax under the Agricultural Adjustment Act unless, after the enactment of this Act, and prior to January 1, 1940,* a claim for refund has been filed by such person in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. All evidence relied upon in support of such claim shall be clearly set forth under oath. The Commissioner is authorized to prescribe by regulations, with the approval of the Secretary, the number of claims which may be filed by any person with respect to the total amount paid by or collected from such person as tax under the Agricultural Adjustment Act, and such regulations may require that claims for refund of processing taxes with respect to any commodity or group of commodities shall cover the entire period during which such person paid such processing taxes. (7 U. S. C. 1940 ed., Sec. 645.)

SEC. 907. EVIDENCE AND PRESUMPTIONS.

(a) Where the refund claimed is for an amount paid or collected as processing tax, as defined herein,

* July 1, 1937, in Revenue Act of 1936

it shall be prima-facie evidence that the burden of such amount was borne by the claimant to the extent (not to exceed the amount of the tax) that the average margin per unit of the commodity processed was lower during the tax period than the average margin was during the period before and after the tax. If the average margin during the tax period was not lower, it shall be prima-facie evidence that none of the burden of such amount was borne by the claimant but that it was shifted to others.

(b) The average margin for the tax period and the average margin for the period before and after the tax shall each be determined as follows:

(1) *Tax period.*—The average margin for the tax period shall be the average of the margins for all months (or portions of months) within the tax period. The margin for each such month shall be computed as follows: From the gross sales value of all articles processed by the claimant from the commodity during such month, deduct the cost of the commodity processed during the month and deduct the processing tax paid with respect thereto. The sum so ascertained shall be divided by the total number of units of the commodity processed during such month, and the resulting figure shall be the margin for the month.

(2) *Period before and after the tax.*—The average margin for the period before and after the tax shall be the average of the margins for all months (or portions of months) within the period before and after the tax. The margin for each such month shall be computed as follows: From the gross sales value of all articles processed by the claimant from the commodity during such month, deduct the cost of the commodity processed during the month. The sum so ascertained shall be divided by the number of units of the commodity processed during such month, and the resulting figure shall be the margin for the month.

(3) *Average margin.*—The average margin for each period shall be ascertained in the same manner as monthly margins under subdivisions (1) and (2), using total gross sales value, total cost of commodity processed, total processing tax paid, and total units of commodity processed, during such period.

(4) *Combination of commodities.*—Where, as, for example, in the case of certain types of tobacco, the articles produced and sold by the claimant are the product of several commodities combined by him during processing, the average margins shall be established with respect to such commodities as a group, and not individually, in accordance with rules and regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury.

(5) *Cost of commodity.*—The cost of commodity processed during each month shall be (a) the actual cost of the commodity processed if the accounting procedure of the claimant is based thereon, or (b) the product computed by multiplying the quantity of the commodity processed by the current prices at the time of processing for commodities of like quality and grade in the markets where the claimant customarily makes his purchases.

(6) *Gross sales value of articles.*—The gross sales value of articles shall mean (a) the total of the quantity of each article derived from the commodity processed by the claimant during each month multiplied by (b) the claimant's sale prices current at the time of processing for articles of similar grade and quality.

(7) The quantity of each article derived from the commodity processed may be either (a) the actual quantity obtained, as shown by the records of the claimant, or (b) an estimated quantity computed by multiplying the quantity of commodity processed by appropriate conversion factors giving the quantity of articles customarily obtained from the processing of each unit of the commodity.

(c) The "tax period" shall mean the period with respect to which the claimant actually paid the processing tax to a collector of internal revenue and shall end on the date with respect to which the last payment was made. The "period before and after the tax" shall mean the twenty-four months (except that in the case of tobacco it shall be the twelve months) immediately preceding the effective date of the processing tax, and the six months, February to July, 1936, inclusive. If during any part of such period the claimant was not in business, or if his records for any part of such period are so inadequate as not to provide satisfactory data on prices paid for commodities purchased or prices received for articles sold, the average prices paid or received by representative concerns engaged in a similar business and similarly circumstanced may with the approval of the Commissioner, where necessary for a fair comparison, be substituted in making the necessary computations. If the claimant was not in business during the entire period before and after the tax, the average margin, during such period, of representative concerns engaged in a similar business and similarly circumstanced, as determined by the Commissioner, shall be used as his average margin for such period.

(d) If the claimant made any purchase or sale otherwise than through an arm's-length transaction, and at a price other than the fair market price, the Commissioner may determine the purchase or sale price to be that for which such purchases or sales were at that time made in the ordinary course of trade.

(e) Either the claimant or the Commissioner may rebut the presumption established by subsection (a) of this section by proof of the actual extent to which the claimant shifted to others the burden of the processing tax. Such proof may include, but shall not be limited to—

(1) Proof that the difference or lack of difference

between the average margin for the tax period and the average margin for the period before and after the tax was due to changes in factors other than the tax. Such factors shall include any clearly shown change (A) in the type or grade of article or commodity, or (B) in costs of production. If the claimant asserts that the burden of the tax was borne by him and the burden of any other increased costs was shifted to others, the Commissioner shall determine, from the effective dates of the imposition or termination of the tax and the effective date of other changes in costs as compared with the date of the changes in margin (when margins are computed for weeks, months, or other intervals between July 1, 1931, and August, 1936, in the manner specified in subsection (b)), and from the general experience of the industry, whether the tax or the increase in other costs was shifted to others. If the Commissioner determines that the difference in average margin was due in part to the tax and in part to the increase in other costs, he shall apportion the change in margin between them;

(2) Proof that the claimant modified existing contracts of sale, or adopted a new form of contract of sale, to reflect the initiation, termination, or change in amount of the processing tax, or at any such time, changed the sale price of the article (including the effect of a change in size, package, discount terms, or any other merchandising practice) by substantially the amount of the tax or change therein, or at any time billed the tax as a separate item to any vendee, or indicated by any writing that the sale price included the amount of the tax, or contracted to refund any part of the sale price in the event of recovery of the tax or decision of its invalidity; but the claimant may establish that such acts were caused by factors other than the processing tax, or that they do not represent his practice at other times. If the claimant processed any product in addition to

the commodity with respect to the processing of which there was paid or collected an amount as tax for which he claims a refund, and if the Commissioner has reason to believe that the burden of such amount was shifted in whole or in part by means of the transactions relating to such product, the average margin with respect to such product, and articles processed therefrom, shall also be considered, and shall be determined for the tax period applicable to the commodity and for the period before and after the tax in the manner prescribed in subsection (b) of this section. To the extent the Commissioner determines that the average margin with respect to such product was higher during the tax period than it was during the period before and after the tax, it shall be prima facie evidence that such amount was not borne by the claimant but that it was shifted to others. (7 U. S. C. 1940 ed., Sec. 649.)

Revenue Act of 1942, c. 619, 56 Stat. 798:[1]

SEC 510. ABOLITION OF BOARD OF REVIEW AND TRANSFER OF JURISDICTION TO BOARD OF TAX APPEALS.

(a) Effective as of the close of business on December 31, 1942, the Board of Review, established under section 906 (b) of the Revenue Act of 1936, is hereby abolished and the jurisdiction vested in said Board of Review is hereby transferred to and vested in the Board of Tax Appeals.

* * * * *

(c) All proceedings pending in the said Board of Review on December 31, 1942, shall be deemed pending in and be transferred forthwith to the Board of Tax Appeals, and shall be proceeded with and disposed of by the Board of Tax Appeals as if originally begun therein.

[1] The name of the Board of Tax Appeals was changed by Section 504 of the Revenue Act of 1942 to The Tax Court of the United States.

(d) All journals, dockets, books, files, records, and property, including office equipment of the said Board of Review, shall be transferred to the Board of Tax Appeals.

(e) Section 902 of the Revenue Act of 1936 (relating to conditions on allowance of refunds) is amended by striking out "Board of Review" and inserting in lieu thereof "Board of Tax Appeals (hereinafter referred to as the 'Board')".

* * * * * *

(7 U. S. C. 1940 ed., Supp. II, Sec. 648.)

Treasury Regulations 96, promulgated under the Revenue Act of 1936:

ARTICLE 201. *Claims—Form and where to file.*—Claims for the refund of tax shall be made on the prescribed forms. Such claims shall be prepared in accordance with the instructions contained on the forms and in accordance with the provisions of these regulations. Each claim (except claims for refund of compensating tax—see article 401) shall be filed with the collector of internal revenue for the district wherein the claimant has his principal place of business. If the claimant has no principal place of business in the United States, the claim shall be filed with the collector of internal revenue located at Baltimore, Md. Copies of the prescribed forms may be obtained from any collector of internal revenue.

ART. 202. *Facts and evidence in support of claim.*—Each claim shall set forth in detail and under oath each ground upon which the refund is claimed. It is incumbent upon the claimant to prepare a true and complete claim and to substantiate by clear and convincing evidence all of the facts necessary to establish his claim to the satisfaction of the Commissioner; failure to do so will result in the disallowance of the claim.

The provisions of these regulations require that certain specific facts shall be stated in support of any claim for refund. The claimant is privileged to prove those facts in any manner available to him and to submit such evidence to that end as he may desire.

ART. 204. *Conditions as to tax burden with respect to amount of refund allowable.*—A refund may be allowed to the person who paid the tax, only of that amount paid as tax as to which the claimant establishes to the satisfaction of the Commissioner (1) that he bore the burden of such amount and has not been, or may not be, relieved thereof nor reimbursed therefor, and has not shifted such burden, directly or indirectly, through or by any of the means set forth in subsection (a) of section 902 of the Act; or (2) that he has repaid such amount unconditionally to his vendee who bore the burden thereof, as provided in subsection (b) of section 902 of the Act.

ARTICLE 601. *Claim form prescribed.*—Claims for refund of amounts paid as processing tax (as defined in section 913 (b) of the Act) shall be filed on P. T. Form 79. (See Chapter 11 of these regulations for general provisions relating to all claims.)

ART. 603. *Payment of tax.*—The claimant shall set forth in the claim complete data with respect to the amount of processing tax which he has paid on the processing of the commodity. Each claim shall show as to each month's processing of the commodity: (1) the total tax liability returned; (2) the total amount of tax paid on the first domestic processing of the commodity; (3) the date and amount of each payment and the month for which paid; (4) that part of the total amount paid which represented the processing of the commodity for a customer for a charge or fee ("custom processing tax," see Chapter V of these regulations); (5) that part of the total

amount paid which represented processing tax, as defined in section 913 (b) of the Act; and (6) the collector to whom each payment was made. In the case of tobacco the above data respecting tax payment shall be shown separately with respect to each market classification.

ART. 605. *Evidence as to margins.*—Section 907 of the Act provides that in claims for refund of amounts paid as processing tax it shall be prima facie evidence that the burden of such amount was borne by the claimant to the extent (not to exceed the amount of the tax) that the average margin per unit of the commodity processed was lower during the tax period than the average margin per unit of such commodity was during the period before and after the tax. If the average margin during the tax period was not lower, it shall be prima facie evidence that none of the burden of such amount was borne by the claimant but that it was shifted to others.

There shall be submitted with, and as a part of, each claim, a statement showing the average margin for the tax period and for the period before and after the tax. (For definition of "tax period" and "period before and after the tax," see section 907 (c) of the Act.)

The average margin for the tax period shall be computed as follows: Determine for each month during the period (1) the gross sales value of articles derived from the commodity processed during such month; (2) the cost of the commodity processed during such month; (3) the amount of processing tax paid with respect to the quantity of the commodity processed during the month; and (4) the number of units of the commodity processed during the month. The sum of the monthly gross sales values for all months during the period minus the sum of the monthly costs of the commodity processed for all months during the period, minus the sum of

the processing tax paid for all months during the period, and divided by the sum of the number of units of the commodity processed during all the months comprising the period is the average margin for such period. (For definition of "cost of commodity" and "gross sales value," see section 907 (b), paragraphs (5) and (6), respectively, of the Act.)

The average margin for the period before and after the tax shall be computed in the same manner as the average margin for the tax period, except that the processing tax does not enter into the computation.

In determining the average margin for the tax period, the "number of units of the commodity processed" shall be the number of units of the commodity with respect to which the claimant actually paid the processing tax; the "cost of the commodity processed" shall be the cost of the number of units of the commodity with respect to which the claimant actually paid the processing tax; the "gross sales value of articles" shall be the gross sales value of articles processed from the number of units of the commodity with respect to which the claimant actually paid the processing tax.

In support of such statement there shall be submitted, verified by appropriate affidavit, a detailed showing of the manner in which the margins for each month and the average margins for each period were ascertained, the data and records on which they were based, the location of such data and records, and all other related matters, including the accounting procedure of the claimant, which entered into the computations of such margins. All elements, factors, units, or measures entering into the computation of such margins, and any departure from uniformity in the use thereof in making such computation for any part of either period, must be fully explained and justified.

ART. 606. *Other evidence.*—In addition to the showing as to margins, the claimant is privileged to submit with his claim any other evidence available to him tending to establish that he bore the burden of the tax. Such evidence may be submitted to support the prima facie presumption, if such presumption is in favor of the claimant, or to rebut such presumption if it is against him. (See section 902 and subsection (e) of section 907 of the Act.)

APPENDIX B

Reprint of Pages 126-129 of Transcript of Record Due to Illegibility:

(126)

RAYMOND A. O'CONNOR, being duly sworn, deposes and says that he is a Certified Public Accountant of the State of New York; that he audited the books of account and records of Middleport Flour Mills, Inc., (now Angelus Milling Co., Inc.,) and also the books of Niagara Falls Milling Company; that between March 1, 1939, and March 22, 1939, he obtained photostatic copies of the working papers of the representatives of the Bureau of Internal Revenue, two members of which were named Troy and Lieben. The photostatic copies of the working papers of the representatives of the Bureau of Internal Revenue were obtained from the accountant for the trustee in bankruptcy of the Niagara Falls Milling Company.

Niagara Falls Milling Company and Middleport Flour Mills, Inc., (now Angelus Milling Co., Inc.,) had common officers and a common bank account from July 1, 1933, to January 6, 1936. Both Niagara Falls Milling Company and Middleport Flour Mills, Inc., (now Angelus Milling Co., Inc.,) also had a common set of books; and when the representatives of the Bureau of Internal Revenue in examining the claim of Angelus Milling Co., Inc., for a refund of its processing taxes in July, 1939, and in September, 1940, examined the books of the Niagara Falls Milling Company, they also examined the records of the Angelus Milling Co., Inc.

Deponent was unable to obtain the books of Angelus Milling Co., Inc., until about September, 1941, as they were in the custody of the Bankruptcy Court at Buffalo, New York. Deponent did, however, obtain the essential

figures from his partner, Jackson A. Lyon, who in turn obtained them from the representative of the Bureau of Internal Revenue, J. Bernard Lieben. A copy of the Affidavit of deponent's partner, Jackson A. Lyon, accompanies deponent's affidavit.

Deponent knows of his own knowledge that representatives of the Commissioner of Internal Revenue investigated the claim for refund of Angelus Milling Co., Inc., on its merits and sent Angelus Milling Co., Inc., a formal rejection of the claim on May 24, 1941. Deponent further states that he is President of both Niagara Falls Milling Co., Inc., and Angelus Milling Co., and knows of his own knowledge that the government has offered

the Niagara Falls Milling Company in bankruptcy a refund of $51,000.00 for processing taxes illegally collected, subject to offsets of $41,000.00. In this offer of refund are included the tax payments made by Angelus Milling Co., Inc.; and had the claim of the Niagara Falls Milling Company not included the claim of the Angelus Milling Co., Inc., no refund whatsoever would be due Niagara Falls Milling Company. Deponent is also one of the largest creditors of the Niagara Falls Milling Co., Inc., in bankruptcy.

Deponent further states that of his own knowledge he knows that on November 18, 1938, there was addressed to Mr. Harry Dickinson of Lockport, New York, the then President of Angelus Milling Co., Inc., the following letter

Treasury Department
Internal Revenue Service
Buffalo, N. Y.

Office of
Internal Revenue Agent in Charge
200 U. S. Courthouse, Niagara Square
Buffalo Division

November 18, 1938

Mr. Harry Dickinson
Lockport, N. Y.

Sir:

In connection with the investigation of Claim for refund under Title VII, Revenue Act of 1936—Claim F5899, you are requested to allow examination of the following records of the Middleport Flour Mills, Inc., and Angelus Flour Mills, Inc.:

General Ledgers of both corporations
for the years 1935 and 1936
Minute Books of both corporations

In view of the fact that the investigation will be completed

within the next few days I would request that these records be made available to me on Monday, November 21, at Room 1011, White Building, Buffalo, N. Y.

Respectfully,

J. Bernard Lieben
General Deputy Collector.

JBL:E

Deponent furnished J. Bernard Lieben the information he requested on November 21, 1938, at Buffalo, New York.

(Signed) RAYMOND A. O'CONNOR.

Subscribed and sworn to before me this eighth day of February, 1943.

(Signed) (Mrs.) ALICE S. BAIRD,
Notary Public.

(129)

JACKSON A. LYON, being duly sworn, deposes and says that he is a Certified Public Accountant of the State of New York and that on behalf of Middleport Flour Mills, Inc., (now Angelus Milling Co., Inc.,) be held conferences on September 4, 5, 6 and 7, 1940, with representatives of the Bureau of Internal Revenue with respect to the Claim for Refund of Processing Taxes filed with the Bureau of Internal Revenue on or about August 15, 1938.

There were four or five representatives of the Bureau of Internal Revenue present at the conference, one named Troy who was a native of Colorado and is now, so deponent is informed, in business in Atlanta, Georgia, and another, so deponent is informed, by the name of J. Bernard Lieben was a Deputy Collector in the Office of the Collector of Internal Revenue in New York City.

Deponent further states that in the four days' conferences the representatives of the Commissioner of Internal Revenue investigated fully the merits of the claim of Angelus Milling Co., Inc., for its refund of processing taxes illegally collected.

(Signed) JACKSON A. LYON.

Subscribed and sworn to before me this 8th day of February, 1943.

(Mrs.) ALICE S. BAIRD,
Notary Public.

APPENDIX C

The United States vs. Memphis Cotton Oil Company

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1932

No. 308

THE UNITED STATES, *Petitioner*,

v.

MEMPHIS COTTON OIL COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims in the above case rendered May 31, 1932, but not yet officially reported.

QUESTION PRESENTED

Whether the respondent may maintain a suit for the refund of 1922 and 1923 taxes where the only claims for refund filed contained no statement of the grounds relied upon but where the Commissioner, through a report of the revenue agent, learned facts which if presented in a claim should have caused a refund. The claims were duly filed. The report reached the Commissioner after

the expiration of the period for filing a claim for refund of the 1922 taxes but before the expiration of the period for filing a claim for the 1923 taxes.

STATUTES AND REGULATIONS INVOLVED

R. S. 3228 (a) as reenacted in section 1012 of the Revenue Act of 1924, c. 234, 43 Stat. 253, 342, provides:

> "SEC. 3228. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in section 281 of the revenue act of 1924, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum."

R. S. 3226 as reenacted in section 1113 of the Revenue Act of 1926, c. 27, 44 Stat. 9, 116, provides:

> "SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing of such claim unless the Commis-

sioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

Section 284 of the Revenue Act of 1926, c. 27, 44 Stat. 9, 66, provides in part as follows:

"Sec. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this act, * * * the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any such act as amended, the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

"(b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—

"(1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

"(2) The amount of the credit or refund shall not exceed the portion of the tax paid during the three or four years, respectively, immediately preceding the filing of the claim, or if no claim was filed, then during the three or four years, respectively, immediately preceding the allowance of the credit or refund."

Article 1036 of Regulations 62, promulgated under the Revenue Act of 1921, provides in part:

> "*Claims for refund of taxes erroneously collected.*—Claims by the taxpayer for the refunding of taxes and penalties erroneously or illegally collected shall be made on Form 843. In this case the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath."

Similar regulations have been in force under all the income tax acts.

STATEMENT

Respondent sued in the Court of Claims to recover overpayments of income taxes for the years 1922 and 1923 amounting to $6,496.46. The respondent found the facts as follows:

The respondent paid the last installment of its 1922 taxes on December 7, 1923. It overpaid this tax in the amount of $1,660.70. The respondent paid the last installment of its 1923 tax on December 6, 1924. It overpaid this tax in the amount of $4,835.76.

A timely claim for refund for 1922 was filed on June 30, 1927. The claim specified no grounds but stated as follows:

> "Deponent verily believes that this application should be allowed for the following reasons:
> "The statement attached hereto shows—

1.	That the amount of tax paid for this year was	$25,626.25
2.	And that the correct amount of tax due was	24,296.56
3.	And there was overpaid in error	$ 1,329.69
4.	Refund of which is requested and with interest as provided by law.	

"The statement attached to this claim by the plaintiff stated as follows:

Net income per books	$159,836.71
Taxable net income	194,372.46
Difference	$ 34,535.75

Computation of Tax

Net income	$194,372.46
12½ per cent	24,296.56
Previously paid	25,626.25
Overpaid	$ 1,329.69

On the same day a timely claim for 1923 was filed by the respondent in form identical to that used in the 1922 claim with no statement of the grounds relied on. No further claims were ever filed by the respondent.

The matter was referred by the Commissioner to the revenue agent in the respondent's district to examine the respondent's books and make a detailed report to the Commissioner. This report was received by the Commissioner on February 7, 1928, before the expiration of the time for filing claims for refund in 1923 taxes but after the expiration of the time during which respondent might have filed a claim for refund of 1922 taxes. This report showed that the respondent had been overassessed. The Deputy Commissioner then wrote the respondent that a certificate of overassessment would issue in due course. Later, after further examination, the Deputy Commissioner wrote the respondent that as no evidence had been filed to support the general claims filed by the respondent the claims would be rejected. In due course, on October 23, 1929, the respondent's claims for refund of 1922 and 1923 were rejected on the ground that they were not sufficient under the statute and that, therefore, allowance and refund of the overpayments for 1922 and 1923 were barred by the statute of limitations.

SPECIFICATION OF ERRORS

1. The Court of Claims erred in holding that a timely claim for refund specifying no grounds may support a suit for refund of taxes because the Commissioner, through a revenue agent, learned that an overpayment had been made by the respondent.

2. The Court of Claims erred in giving judgment for the respondent.

REASONS FOR GRANTING THE WRIT

1. The United States has filed a petition for a writ of certiorari to the Court of Claims in a similar case, No. 141, *The United States* v. *Factors & Finance Company*. The Court of Claims decision in the instant case is based upon its earlier decision in the Factors & Finance Company case. The authorities cited by the Government in that petition, as conflicting with the Court of Claims decision, are also in conflict with the present decision. The questions presented by the two cases are similar. They arise under the same statutory provisions and are of equally great importance in the administration of the revenue acts.

2. The decision in the instant case is an extension of the doctrine laid down by the Court of Claims in the Factors & Finance Company case. In the instant case the taxpayer never filed any paper specifying the nature of its claim for refund. The Commissioner's knowledge of grounds on which a claim might have been based came solely through his own agents. As to one of the taxable years in question that knowledge reached the Commissioner at a date when the period for filing a claim for refund of taxes for that year had expired. As to both years the taxpayer entirely failed to follow the statutory requirements that the facts relied upon in support of the claim should be clearly set out. If the decision of the Court of Claims in the instant case is correct, the strict requirements of the statute that claims for refund be filed by taxpayers are almost entirely abrogated. In such

an event a taxpayer who had filed a general claim within time could secure a refund if entirely without the taxpayer's knowledge the Commissioner had learned that an overpayment of taxes had been made by him.

CONCLUSION

Wherefore it is respectfully submitted that this petition should be granted.

THOMAS D. THACHER,
Solicitor General.

August, 1932.
[Title and index omitted.]